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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 1142

RUDOLPH MEJIA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for the Eastern District of Louisiana (R. 9-11) is reported in 57 F. Supp. 1015. The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 26-30) is reported in 152 F. 2d 686.

JURISDICTION

The judgment of the circuit court of appeals was entered on December 28, 1945 (R. 30). A petition for rehearing, filed by petitioners on January 18, 1946 (R. 31-36), was denied on January 25, 1946 (R. 37). The petition for a writ of

certiorari was filed on April 20, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a libel in admiralty for wrongful death caused by a public vessel of the United States may be maintained if filed after the expiration of the time permitted for the bringing of an action for wrongful death by the statute of the State within whose territorial waters death occurred.

STATUTES INVOLVED

The pertinent provisions of the Public Vessels Act, 43 Stat. 1112, 46 U. S. C. 781, *et seq.*, the Suits in Admiralty Act, 41 Stat. 525, as amended, 47 Stat. 420, 46 U. S. C. 741, *et seq.*, and the provisions of Article 2315 of the Revised Civil Code of Louisiana, are set forth in the Appendix, *infra*, pp. 9-12.

STATEMENT

On February 16, 1944, petitioners, seeking to recover for the wrongful death of their two minor children, filed a libel in admiralty, in the District Court of the United States for the Eastern District of Louisiana, against the United States under the Public Vessels Act, 43 Stat. 1112-1113, 46 U. S. C. 781-789. The libel (R. 1-6) alleged that, due to the negligent operation of the United States Army Tug "Lt. Col. Herbert L. Kidwell", petitioners'

children had been drowned on October 12, 1942, following a collision between the "Kidwell" and a motor vessel in which they were passengers. The accident occurred on the Mississippi River within the territorial limits of the State of Louisiana (R. 3).

The United States filed an exception to the libel, seeking its dismissal on the ground that petitioners' right to bring the action depended solely upon Article 2315 of the Civil Code of Louisiana (*infra*, pp. 9-10), and that said right had not been exercised within the one-year period provided by that statute (R. 7-8).

On November 13, 1944, the district court sustained the exception to the libel (R. 9-11). Petitioners thereafter moved to amend the libel so as to set forth certain facts claimed to constitute an "equitable excuse" for not having filed the libel within the one-year period (R. 11-16). This motion was denied by the district court (R. 17), which, on December 23, 1944, entered its decree dismissing the libel (R. 18). On appeal, the circuit court of appeals affirmed the judgment of the district court (R. 30).

ARGUMENT

The court below held that petitioners' right to maintain the action "was created by Article 2315 of the Louisiana Civil Code [*infra*, pp. 9-10] and was extinguished by the terms of the same statute when it was not enforced within one year"

(R. 27). In so holding, the court below was clearly correct. Article 2315 of the Louisiana Civil Code is the sole statute of that State conferring a right of action for wrongful death and such right, if not exercised within the prescribed one-year period, is extinguished. *Goodwin v. Bodcaw Lumber Co.*, 109 La. 1050, 1066; *Thompson v. Gallien*, 127 F. 2d 664 (C. C. A. 5). Petitioners assert, however, that the Public Vessels Act, 46 U. S. C. 781-789, creates an independent right of action against the United States for wrongful death "caused by a public vessel" and that they may maintain the instant libel since it was filed within the two-year limitation period prescribed for such an action by the Suits in Admiralty Act (Pet. 2-3). Section 5, Appendix, *infra*, p. 12; see Section 2 of the Public Vessels Act, *infra*, note 2, p. 7.

Section 1 of the Public Vessels Act, 46 U. S. C. 781, permits the maintenance of a "libel in personam in admiralty * * * for damages caused by a public vessel * * *." An action to be maintained thereunder must be one otherwise cognizable in admiralty. *State of Maine v. United States*, 134 F. 2d 574 (C. C. A. 1), certiorari denied, 319 U. S. 772; cf. *Canadian Aviator, Ltd. v. United States*, 324 U. S. 215, 228. Neither under the general maritime law nor at common law could an action for wrongful death be maintained. *The Harrisburg*, 119 U. S. 199, 213; *The Alaska*, 130 U. S. 201, 209; *Western Fuel Co. v. Garcia*,

257 U. S. 233, 240. While Congress has provided a right of action for wrongful death on the high seas, 46 U. S. C. 761, *et seq.*, it has made no such provision for a right of action for death of persons such as petitioners' children upon navigable waters within any State. Section 7 of the Death on the High Seas Act, 41 Stat. 538, 46 U. S. C. 767. An action for wrongful death occurring upon such waters may be maintained only to the extent that the State upon whose waters the death occurred has provided therefor. As this Court has held, when "death * * * results from a maritime tort committed on navigable waters within a State whose statutes give a right of action on account of death by wrongful act, the admiralty courts will entertain a libel *in personam* for the damages sustained by those to whom such right is given." *Western Fuel Co. v. Garcia*, 257 U. S. 233, 242. But since such causes of action are entirely creatures of state statute, the right conferred must be exercised within the time limit prescribed in the applicable state statute. *The Harrisburg*, *supra*, at 214; *Western Fuel Co. v. Garcia*, *supra*, at 242.

Contrary to petitioners' claim (Pet. 5, 9-11), *New England Maritime Co. v. United States*, 55 F. 2d 674 (D. Mass.), affirmed on opinion below, *sub nom. United States v. Gould*, 73 F. 2d 1016 (C. C. A. 1), and *Dobson v. United States*, 27 F. 2d 807 (C. C. A. 2), certiorari denied, 278 U. S. 653, are not in conflict with the decision below. The court below made explicit reference to those cases

to support its statement that "'Damages caused by a public vessel of the United States' would seem sufficiently broad to cover loss of life" (R. 27, note 2). But those cases differed from that at bar in an important respect, for the libels were there brought not only under the Public Vessels Act but under that Act in conjunction with the Death on the High Seas Act (41 Stat. 537, 46 U. S. C. 761, *et seq.*). See 55 F. 2d at 685, and 27 F. 2d at 808. Since the Death on the High Seas Act is specifically inapplicable to death on "waters within the territorial limits of any State" (46 U. S. C. 767), petitioners here could recover under the state statute or not at all. See *supra*, pp. 4-5.¹

The Public Vessels Act, upon which petitioners sought to found their action, was, as this Court stated in *Canadian Aviator, Ltd. v. United States*, *supra*, the last of a series of enactments intended to impose on the United States the same liability as that imposed by the admiralty law on the private shipowner. That petitioners may not here prevail is plain since their libel could not be maintained against a private shipowner under the Louisiana Civil Code because of the extinguishment of the right of action created by that Code at the end of one year. As the district court

¹ For this reason, the question involved, *inter alia*, in *American Stevedores, Inc. v. Porello and the United States*, No. 996, this Term, certiorari granted, May 6, 1946, as to the meaning of the word "damages" in the Public Vessels Act, cannot be reached in this case.

noted (R. 10-11) "the purpose of the two year period provided in the Suits in Admiralty Act was to limit not to extend rights of action. There is no apparent reason why the government should give greater rights against itself in the case of its vessels used as public vessels than exist against private owners."² While the decision in *Just v. Chambers*, 312 U. S. 383, is relied upon by petitioners for the proposition that the time within which suit may be brought under the Public Vessels Act cannot "be left to the varying provisions of the state statutes" (Pet. 6, 13-14), this Court recognized, in that very case, that uniformity in wrongful death cases is not essential. See 312 U. S. at 387-391, 392.

Petitioners present as a question involved, but make no argument concerning, the correctness of the holding below (R. 29-30) that petitioners' delay in filing the libel was not excused on "equitable" grounds (Pet. 5). In this respect, it would

² It may be further noted that petitioners could not have recovered even if the vessel had been a merchant vessel of the United States rather than a public vessel, for Section 2 of the Suits in Admiralty Act, 41 Stat. 525, 46 U. S. C. 742, provides:

In cases where if such vessel were privately owned or operated * * * a proceeding in admiralty could be maintained *at the time of the commencement of the action herein provided for*, a libel in personam may be brought against the United States * * * [Emphasis supplied].

Section 2 of the Public Vessels Act, 46 U. S. C. 782, provides that suits thereunder "shall be subject to and proceed in accordance with the provisions of" the Suits in Admiralty Act.

appear sufficient to note that before the period of the Louisiana statute had run on October 12, 1943, the Government did nothing to lull petitioners into the belief that a settlement was in contemplation; much less may anything approaching an acknowledgment of liability be gleaned from the record (R. 11-14). "The forbearance of the claimants to sue was altogether voluntary on their part, and it is not within the power of the court to relieve them from the consequence of their failure to comply with the condition of the statute." *United States v. Utz*, 80 Fed. 848, 851 (C. C. A. 3); cf. *Munro v. United States*, 303 U. S. 36; *Finn v. United States*, 123 U. S. 227; *Ritter v. United States*, 28 F. 2d 265 (C. C. A. 3).

CONCLUSION

The decision below is clearly correct, and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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